

SUMMARY ANALYSIS OF AMENDED BILL

Author: O'Connell Analyst: Kristina North Bill Number: SB 2080

Related Bills: See previous analysis Telephone: 845-6978 Amended Date: 4-22-98

Attorney: Doug Bramhall

Sponsor:

SUBJECT: 1998 California Land & Water Conservation Act/Qualified Contributions Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 20, 1998.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED FEBRUARY 20, 1998, STILL APPLIES.

☒ OTHER – See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a tax credit to taxpayers who contribute property to the state, approved local governments, or approved nonprofit organizations designated by the state or local government. The amount of tax credit would be 55% of the fair market value (FMV) of the qualified contribution.

This analysis addresses the provisions of the bill that pertain to the tax incentives.

SUMMARY OF AMENDMENT

The April 22, 1998, amendment deleted the provision allowing a credit for any money contributed, up to 5% of the FMV of the related property contributed. The requests for clarification on how the 55% and 5% limits would interact and a verification process for a monetary donation, as discussed in the department's analysis of this bill as introduced February 20, 1998, would no longer apply.

The April 22, 1998, amendment resolves the contradiction between the Public Resources Code (PRC) and the Revenue and Taxation Code by replacing the graduated percentages with a fixed 55%.

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

☐ S ☐ O
☐ SA ☐ OUA
☐ N ☐ NP
☐ NA ☐ NAR
☒ X PENDING

Agency Secretary Position:

☐ S ☐ O
☐ SA ☐ OUA
☐ N ☐ NP
☐ NA ☐ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved _____
Position Disapproved _____
Position Noted _____

Department/Legislative Director Date
Johnnie Lou Rosas **5/11/98**

Agency Secretary Date

By: Date:

The amendment also incorporated changes to the same sections made by other newly enacted law.

The remaining policy, implementation and technical considerations that still apply are restated below. Except for the above and the new revenue estimate, the department's analysis of the bill as introduced February 20, 1998, still applies.

Policy Considerations

This bill does not include a sunset date to allow the Legislature to review the effectiveness of the credit.

This bill would provide a credit for donating land and/or water rights equal to 55% of the value of the property, making a land contribution six to eight times more valuable than any other kind of donation. Additionally, in combination with the federal deduction for a charitable contribution, this credit could provide some taxpayers tax benefits of almost 95% of the value of the donated land or water rights.

A "related party" could receive the full credit amount without an FMV reduction for property interests or other considerations received in exchange for the contributed party. For example: Partnership J&S, equally owned by Joe and Sue who are otherwise unrelated, makes a contribution of property that is qualified for this credit. As partners of Partnership J&S, Joe and Sue each receive a 50% pass-through credit. Joe independently operates a fruit stand on the contributed property and retains a permanent easement to continue operating his fruit stand. While Joe has received a property interest in the contributed property, he is not the contributing taxpayer (Partnership JS is) and would not be required to reduce his pass-through credit amount by the FMV of the permanent easement on the contributed property. In the extreme, a partnership could be created for the sole purpose of avoiding the credit reduction.

Implementation Consideration

This bill provides that the Secretary would be responsible for accepting and approving applications for contributions qualifying for the credit and requires that the Secretary annually provide a listing to the FTB containing the names, taxpayer identification numbers, donated property description and the total credit amount approved for each donor. However, it should be specified that, in the event the donor is a partnership or S corporation, each partner or shareholder's taxpayer identification number also should be included in the annual listing.

Technical Considerations

Under both PITL and B&TCL, this bill provides that the FMV of any qualified contribution "approved for acceptance under this section or Section ..." is to be passed through to the partners or shareholders in accordance with their interest in the pass-through entity as of the date of the qualified contribution. However, the qualified contribution is not accepted under the PITL or B&CTL by the Franchise Tax Board, but under the PRC by the Secretary of the Resources Agency.

In the case of a pass-through entity, this bill specifies how the qualified percentage would be determined by each partner or shareholder. This language is not necessary since the standard division of credit language would have the same outcome.

Amendments 1 and 2 are provided to resolve these technical concerns.

Tax Revenue Estimate

This bill is estimated to impact PIT and B&CT revenue as shown in the following table for every \$200 million in qualified contributions. It is assumed no approvals and completions will occur prior to June 30, 1999.

Fiscal Year Cash Flow Impact Effective 1/1/99 Enacted After 6/30/98 \$ Millions (Rounded)			
1999/00	2000/01	2001/02	2002/03
(\$85)	(\$105)	(\$110)	(\$110)

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Tax Revenue Discussion

The revenue impact for this bill would be determined by the value of property that might be donated in any given year and the tax liabilities of donors for applying tax credits. This estimate should be considered a rule of thumb for every \$200 million in property and/or property rights. It is assumed that the full \$200 million in property would be donated in a given year. This bill does not specify a maximum amount of qualified contributions that can be donated in any fiscal year, thus, the \$200 million is based on SB 1280 (95/96), a prior bill, which capped the annual allowable credit at that amount.

This amendment differs from the original version dated February 20, 1998, by eliminating the 5% in cash contributions.

This estimate was developed in the following steps. First, it was assumed that a maximum amount of \$200 million in qualified property would be donated within each fiscal year. Second, the average amount of credit will amount to 55% of the fair market value (as provided). Third, the contributors would be able to use 75% of the qualified credit amount per year. Unused carryover credits were applied at the rate of 75% per year. The amount of gains that would have otherwise been reported on sales of property is unknown, but would probably not be particularly significant.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 2080
As Amended April 22, 1998

AMENDMENT 1

On page 26, amend lines 23 through 33 as follows:

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under ~~this section or Section 23630~~ the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. ~~The qualified percentage shall then be determined by each partner or shareholder pursuant to this section.~~ For the purposes of this subdivision, the term "passthrough entity" means any partnership or S corporation.

AMENDMENT 2

On page 35, amend lines 1 through 11 as follows:

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under ~~this section or Section 17053.30~~ the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. ~~The qualified percentage shall then be determined by each partner or shareholder pursuant to this section.~~ For the purposes of this subdivision, the term "passthrough entity" means any partnership or S corporation.